Remarks

The preceding amendments and following remarks are submitted in response to the Official Action of the Examiner mailed July 14, 2005. New claims 37 and 38 have been added. Support for the new claims is found in the specification, claims, and drawings as originally filed. No new matter has been added. Claims 26-38 are pending in this Application. Reconsideration, examination and allowance of all pending claims are respectfully requested.

Rejections under 35 U.S.C. § 103(a)

Claims 26, 28, and 32-36 remain rejected as being obvious over Daroga (US 4,631,872) in view of Trice (US 3,251,159). The Examiner asserts that it would have been obvious to manufacture the fall-out shelter of Daroga as a group of interrelated parts to be assembled on site, as taught by Trice, and that in doing so, the Daroga shelter would be considered a "kit" and that all of the parts would be "portable" to the site of installation. Applicant respectfully traverses the rejection.

Applicant has not merely made a prior art kit "portable" as the Examiner appears to be asserting. Rather, the instant claims define a kit containing portable components. The kit includes (1) a portable sealing device, (2)a portable carbon dioxide scrubber, and (3) a portable gaseous oxygen source. *Ranco*, cited by the Examiner, states that "[n]o invention resides in merely changing the form or size of a device, or in merely making it portable or movable... and a somewhat different form of a familiar combination of elements, without achieving new functions or result." *Ranco, Inc. v. Gwynn et al.* 128 F.2d 437, 442; 54 USPQ 3 (1942). Applicant submits that the "device" of the instant claims is the entire kit, thus the claims are not merely directed to making a prior art device portable. Further, the combination of elements recited in the claimed kit does achieve a new function or result. Daroga appears to teach a door, valve, and escape hatch that are permanently installed in a bomb shelter that is "below ground covered by a layer 17 of earth or concrete." See column 1, line 65 through column 2, line 4. Trice similarly appears to teach a shelter permanently "assembled into a hole" and "covered with earth so as to provide the desired protective earth cover." See column 2, line 70 and column 3,

lines 19-21. Applicant submits that Daroga and Trice teach bomb shelters and do not appear to teach a kit of any type. As the instant claims are not directed to a portable bomb shelter, the facts are distinguished from *Ranco*.

In response to Applicant's previous arguments that Daroga does not teach a portable sealing device, portable carbon dioxide scrubber, and portable gaseous oxygen source, the Examiner asserts that the inclusion of "portable" to the claim language is not regarded as inventive as it merely makes an old device portable or movable without producing any new and unexpected result. Applicant respectfully submits that the Examiner is not giving the term "portable" the meaning understood by one of ordinary skill in the art, and as described in the instant specification.

> MPEP 2111 quotes *In re Morris*, 44 USPQ2d 1023, 1027-28 (Fed. Cir 1997):
>
> the "PTO applies to verbiage of the proposed claims the broadest reasonable meaning of the words in their ordinary usage as they would be understood by one of ordinary skill in the art, taking into account whatever enlightenment by way of definitions or otherwise that may be afforded by the written description contained in applicant's specification."

(emphasis added). MPEP 2111.01 states that "[c]laim terms are presumed to have the ordinary and customary meanings attributed to them by those of ordinary skill in the art. *Sunrace Roots Enter. Co. v. SRAM Corp.*, 336 F.3d 1298, 1302, 67 USPQ2d 1438, 1441 (Fed. Cir. 2003)." MPEP 2111.01 further states:

> It is the use of the words in the context of the written description and customarily by those skilled in the relevant art that accurately reflects both the "ordinary" and the "customary" meaning of the terms in the claims. *Ferguson Beauregard/Logic Controls v. Mega Systems*, 350 F.3d 1327, 1338, 69 USPQ2d 1001, 1009 (Fed. Cir. 2003) (Dictionary definitions were used to determine the ordinary and customary meaning of the words "normal" and "predetermine" to those skilled in the art. In construing claim terms, the general meanings gleaned from reference sources, such as dictionaries, must always be compared against the use of the terms in context, and the intrinsic record must always be consulted to identify which of the different possible dictionary meanings is most consistent with the use of the words by the inventor.

(emphasis added). The MPEP thus states that claim terms are to be given the ordinary and customary meanings according to one of ordinary skill in the art, considering what

information is provided in the specification. The instant specification recites kits containing sealing devices such as inflatable gas bladders, cured foam blocks, or sealing tape. See page 6, lines 10-17, and page 7, lines 1-12. Applicant submits that one of ordinary skill in the art, upon reading the instant specification, would understand that the term "portable" is used in the claimed phrase "portable sealing devices" according to the common dictionary definition of "carried or moved with ease" or "easily or conveniently transported". See the attached printout of online dictionary entries for "portable".

The Examiner appears to be suggesting that the room itself is part of the claimed "kit". Instead, the claimed kit includes at least one portable sealing device for sealing said room from any coupled ventilation ducts. Applicant submits that even if one were to combine the teachings of Daroga and Trice, one would not achieve "portable" kit components according to the use of the term in the instant specification and according to one of ordinary skill in the art. At best, a combination of Daroga and Trice would result in a permanent fall-out shelter made of materials delivered to the site of the shelter. Applicant submits that one of ordinary skill in the art would not consider the shelter of Daroga as a kit, and would not consider the valve 52, air-tight door 16, and escape hatch 62 of Daroga as "portable" sealing devices.

According to the Examiner's interpretation of "portable", all of the components of a typical house, including the foundation, walls, flooring, windows, and doors are portable simply because they are delivered to the building site and then assembled into a permanent house. Applicant submits that the Examiner is using an interpretation of "portable" that is contrary to the ordinary and customary meaning attributed to the term by those of ordinary skill in the art, and thus improper.

Additionally, there is no motivation to combine the teachings of Daroga and Trice. The complexity of the multi-room building of Daroga, with its air handling system is significantly different from the single room blast shelter of Trice, which does not appear to have any of the air handling features of the Daroga building. Applicant submits that even if one were to consider the precast bomb shelter of Trice to be a "kit", the elements are not "portable" as one of ordinary skill in the art would understand the term. Trice teaches assembling his shelter into a hole and then covering the entire shelter with

earth. See column 2, line 70 and column 30, lines 19-21. The sections of the shelter of Trice are thus not portable, but are to be permanently buried in the ground. At best, one may view Trice as teaching the possibility of using precast walls to build the permanent, buried structure of Daroga. However, as Trice does not appear to teach a portable sealing device, portable carbon dioxide scrubber, and/or portable gaseous oxygen source, there is no motivation for one to supply such elements to the building of Daroga.

The Examiner cites *Ranco, Inc. v. Gwynn et al.* for stating that it is not inventive to merely make an old device portable or movable without producing any new and unexpected result. The Examiner's argument, however, does not follow the reasoning of the case. The Examiner's assertion is that it would have been obvious for the components of the Daroga shelter to be moved to the site of installation and then assembled, thus making the components "portable". Daroga teach his shelter "will be below ground covered by a layer 17 of earth or concrete." See column 2, lines 2-4. Daroga thus teach a shelter that is permanently buried under the ground. The device taught by Daroga is the completed, buried shelter. In applying *Ranco, Inc.*, it appears the Examiner is arguing that would have been obvious to make the air intake valve 52 of Daroga portable or removable. Applicant submits that there is no motivation or reasoning for doing so because Daroga teach a permanently installed and buried shelter. There is no suggestion or motivation for one to make the air intake valve of Daroga portable or removable because the valve is likely sized and configured to fit the particular ventilation shaft in the shelter. Making the air intake valve portable or removable would appear to serve no purpose and thus one of ordinary skill in the art would have no motivation for doing so. Withdrawal of the rejection is respectfully requested.

Further, there is no expectation of success in making the Examiner's asserted modification to Daroga. Applicant submits that not only is there no motivation or suggestion for making the valve, door or escape hatch of Daroga portable, but there is also no indication of how such a modification could or would be accomplished. Daroga teach the components of the shelter as being permanently assembled and buried to provide the desired level of protection. There appears to be no purpose or reason for modifying the permanent, buried shelter to include a portable sealing device as claimed.

Claims 32, 33, and 35 recite a kit including at least two different sealing devices for sealing said room from any coupled ventilation ducts. The Examiner asserts that Daroga teach valve 52, air-tight door 16, and escape hatch 62 as sealing devices. Independent claim 26, however, recites at least one portable sealing device for sealing said room from any coupled ventilation ducts. Applicant submits that while the valve 52 had this characteristic, the air-tight door and escape hatch of Daroga do not appear to seal the room from a ventilation duct. Daroga thus fail to teach each and every element of the claims. Trice does not appear to teach any ventilation ducts and thus does not teach or suggest any such sealing devices. The combination of Daroga and Trice thus fails to teach each and every element of the claims. Additionally, because both Daroga and Trice teach permanently installed, buried shelters, there is no motivation for one of ordinary skill in the art to modify the air intake valve 52 of Daroga to make it a portable sealing device. Withdrawal of the rejection is respectfully requested.

Claim 35 recites a kit including two or more portable sealing devices selected from the group consisting of inflatable gas bladders, polymeric foam generators, cured foam blocks, and sealing tape. The Examiner has not indicated where in either Daroga or Trice such a teaching is found. Neither reference appears to teach such elements. As such, the rejection appears to be improper. Withdrawal of the rejection is respectfully requested.

Claims 27, 29, 30, 31, and 35 are rejected as being obvious over Daroga and Trice and further in view of Connor, Mayland, Hoshiko, or Staub, Jr. et al.. Applicant respectfully traverses the rejection. Neither Daroga, Trice, or a combination of the references teaches the basic elements of independent claim 26 for the reasons set forth above. None of Connor, Mayland, Hoshiko, or Staub, Jr. et al. provide what Daroga and Trice lack.

With respect to claim 27 and the Connor patent, the Examiner asserts that it would have been obvious to substitute the inflatable valve taught by Connor for the valve 52 in the Daroga building in order to simplify the assembly of the overall kit. As discussed above, Daroga appears to teach a permanent partially underground building. Daroga teaches the valve 52 is normally closed, but it can be opened if required and air

drawn in by means of a hand pump through a filter. See column 2, lines 39-42. Daroga teaches the building having an oxygen supply and air purifying means, and teaches the building is intended to provide an air, gas, and water tight enclosure to protect against nuclear, biological and chemical hazards. See column 1, lines 5-12. The overall teaching of Daroga is that of an air-tight building in which outside air can, if desired, be drawn in. Connor teaches a pressure-controlled valve that "will remain open in the event of a failure of the control pressure, so that circulation of the controlled fluid will not be interrupted when a failure of the control pressure occurs. See column 1, lines 59-62. Applicant submits that there is no motivation for one of ordinary skill in the art to put the pressure-controlled valve of Connor in the fallout shelter of Daroga because Connor's valve would not appear to function in the normally closed fashion desired by Daroga.

Additionally, the pressure-controlled valve of Connor does not appear to be portable. Connor teaches the valve as being installed in a line of pipe by merely cutting out a section of the pipe and replacing the cut section with the valve. Connor specifically teach that "there may be no necessity for providing flanges or threaded fittings to make the valve installation." See column 1, lines 35-39. While Connor teaches the valve as easy to install, the valve appears to be a permanent replacement for the section of cut pipe. Connor's discussion of the valve being permanently installed by cutting out a piece of pipe and not requiring flange or threaded connections appears to actually teach away from a portable valve. Applicant submits that even if one were to combine the teachings of Daroga, Trice and Connor, one would achieve the building of Daroga with precast walls as taught by Trice, with a permanently installed valve of Connor. Such a combination does not result in the kit as claimed. Withdrawal of the rejection is respectfully requested.

Claim 29 recites an oxygen generator having an exhaust tube adapted to be inserted through an existing plumbing water trap. The Examiner asserts that Mayland teaches venting hydrogen gas from compartment 10 via tubing, which is capable of being connected to any desired location such as an existing plumbing water trap of sink or toilet. Applicant has carefully reviewed the Mayland patent and have found no such teaching. Mayland do teach an embodiment in which some of the hydrogen created by

the air purification method is circulated back to the second compartment of the apparatus (column 3, lines 5-9). Mayland also teach separately venting the hydrogen and mixture of carbon dioxide and oxygen to the outside of the submarine (column 5, lines 55-57). Mayland do not appear to teach venting hydrogen gas through tubing capable of being connected to an existing plumbing water trap or toilet. Mayland thus does not appear to teach what Daroga and Trice lack. Withdrawal of the rejection is respectfully requested.

Claim 30 is rejected as being obvious over Daroga in view of Trice and further in view of Hoshiko (US 4,508,700). Claim 31 is rejected as being obvious over Daroga in view of Trice and further in view of Staub, Jr. et al. (US 3,593,711). Applicant respectfully traverses the rejections. Neither Daroga, Trice, or a combination of the references teaches the basic elements of independent claim 26 for the reasons set forth above. Neither Hoshiko nor Staub, Jr. et al. appears to provide what Daroga and Trice lack. Thus, any combination of Daroga, Trice and Hoshiko or Staub, Jr. et al. also fails to teach or suggest the elements of the claims. Withdrawal of the rejection is respectfully requested.

Claims 26, 28-31, 34, and 36 are rejected as being obvious over Rudinger (US 2,977,723) in view of Trice and further in view of Daroga, Mayland, Hoshiko or Staub. The Examiner asserts that even though Rudinger teaches a bomb shelter made of poured concrete, it would have been obvious to make Rudinger's shelter of parts assembled on site in view of the teachings of Trice, and that in doing so, the Rudinger shelter would be considered a "kit" and all of the parts would be "portable" to the site of installation. Applicant respectfully traverses the rejection.

Rudinger teaches a permanent, buried, bomb shelter that can be provided with an air purifier that removes carbon dioxide from the air. See column 2, line 70 through column 3, line 4. Rudinger does not appear to teach or suggest a portable sealing device for sealing the shelter from any coupled ventilation ducts, a portable carbon dioxide scrubber, or a portable gaseous oxygen source, as is recited in independent claim 26. Applicant submits that one of ordinary skill in the art would not interpret the bomb shelter of Rudinger as containing portable components. It appears the Examiner is construing the term "portable" as meaning anything that is capable of being moved once

to a location where it is permanently installed and not movable thereafter. Applicant submits that such interpretation is contrary of the common usage of "portable."

MPEP 2111 states that the verbiage of claims is to be given "the broadest reasonable meaning of the words in their ordinary usage as they would be understood by one of ordinary skill in the art" and also states that the "broadest reasonable interpretation of the claims must also be consistent with the interpretation that those skilled in the art would reach", citing *In re Cortright*, 49 USPQ2d 1464, 1468 (Fed. Cir. 1999). Applicant submits that the term "portable" would be understood by one of ordinary skill in the art as not including a component that is moved once and then permanently installed, as is asserted by the Examiner. None of the cited references teach portable components as recited in the claims. Withdrawal of the rejections is respectfully requested.

Claims 27 and 35 are rejected as being obvious over Rudinger, Trice, Daroga, Mayland, Hoshiko and Staub and further in view of Pearman (US 6,217,441). The Examiner asserts that it would have been obvious to substitute the inflatable sealing device of Pearman for the steel door of Rudinger because both are well known sealing devices within the bomb shelter arts and would work equally well. Applicant respectfully traverses the rejection. Rudinger teaches a bomb shelter designed and intended to protect occupants from the radioactivity and intense heat attendant the explosion of an atom bomb or hydrogen bomb. See column 1, lines 18-20. Rudinger teach the shelter as being made of poured concrete or metal, and specifically teaches a steel door for closing the air filter 32 (column 3, lines 9-10). Pearman teaches a method of sealing building ductwork in response to a chemical or biological attack to prevent the HVAC system from delivering the chemical or biological agent throughout the building (abstract).

Applicant submits that one of ordinary skill in the art would not be motivated to substitute the inflatable bladder of Pearman for the steel door of Rudinger because they do not provide the same level of protection. One of ordinary skill in the art would have no reason to believe that an inflatable bladder designed to prevent chemical or biological agents from entering an HVAC system would provide the same level of protection from radiation and intense heat that a steel door provides. There is no expectation of success in making the substitution asserted by the Examiner. Because the skilled artisan would

not expect the inflatable bladder of Pearman to protect the bomb shelter of Rudinger from the intense heat and radiation from a nuclear blast, there is no motivation for making the substitution. Withdrawal of the rejection is respectfully requested.

Claims 27 and 35 are rejected as being obvious over Rudinger, Trice, Daroga, Mayland, Hoshiko, and Staub, and further in view of Long et al. As the Examiner states, Long et al. teach how to seal a room in case of a biological attack. As stated above, Rudinger teaches a bomb shelter designed with steel or concrete covering the entrances to prevent exposure from the radiation and intense heat from a nuclear blast. Applicant submits that one of ordinary skill in the art would not expect plastic and duct tape to provide the same level of protection as the steel doors and concrete taught by Rudinger. Thus there is no motivation to combine the teachings. Additionally, even if one were to substitute the plastic and duct tape of Long et al. for the steel door of Rudinger, there is no expectation of success in achieving a bomb shelter capable of protecting occupants from the radiation and intense heat from a nuclear blast, which is the objective of Rudinger. Making such a substitution would appear to destroy the usefulness of the Rudinger shelter. Withdrawal of the rejection is respectfully withdrawn.

Claims 26, 27, and 32-36 are rejected as being obvious over Long et al. in view of Michielson (US 3,575,167). Claims 26, 31, and 32-36 are rejected as being obvious over Long et al. in view of Staub et al. The Examiner asserts that it would have been obvious to include the apparatus of Michielson or Staub et al. in a kit containing the plastic sheeting and duct tape of Long et al. because Long et al. do not address how the interior atmosphere of the sealed room should be replenished. Applicant respectfully traverses the rejection. Long et al. specifically teach using a vacuum cleaner with a HEPA filter to provide clean filtered air and create positive pressure to the sealed room (page 52). Thus, there is no motivation for including the apparatus of Michielson or Staub et al. Withdrawal of the rejections is respectfully requested. The Examiner did not address the above argument in the final Office Action. Applicant respectfully requests the Examiner comment on the arguments in the next Office Action.

Applicant submits that new claims 37 and 38 are also patentable over the cited prior art for at least the reasons set forth above. In view of the foregoing, all of pending claims 26-38 are believed to be in condition for allowance. Reexamination and reconsideration are respectfully requested. If a telephone conference might be of assistance, please contact the undersigned attorney at (612) 359-9348.

Respectfully submitted,

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4 entries found for *portable.*

por·ta·ble [fg] Pronunciation Key (pôr'tə-bəl, pōr'-) *adj.*

1. Carried or moved with ease: *a portable typewriter; a portable generator.*
2. Capable of being transferred from one employer to another. Used of an employee benefit.
3. *Computer Science.* Relating to or being software that can run on two or more kinds of computers or with two or more kinds of operating systems.
4. *Obsolete.* Bearable; endurable.

n.

Something, such as a light or small typewriter, that can be carried or moved with ease.

[Middle English, from Old French, from Late Latin `portābilis`, from Latin `portāre`, *to carry.* See `per-`[2] in Indo-European Roots.]

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por'ta·bil'i·ty or **por'ta·ble·ness** *n.*
por'ta·bly *adv.*

Source: *The American Heritage® Dictionary of the English Language, Fourth Edition*

portable

adj 1: easily or conveniently transported; "a portable television set" [ant: unportable] 2: of a motor designed to be attached to the outside of a boat's hull; "a portable outboard motor" n : a small light typewriter; usually with a case in which it can be carried

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